

Title 19

WATER RIGHTS

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Chapter 19.04

WATER RIGHTS

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19.04.010 Definitions.

A. As used in this chapter, all words and phrases shall be interpreted and defined in accordance with Section 16.08.010 and Subsection B. of this section. In the event of a conflict, Subsection B. of this section shall control.

B. As used in this chapter:

“Department” means the city’s water and power department.

“Director” means the director of the city’s water and power department or that person’s designee.

“Water right” shall include, without limitation, units in the Colorado-Big Thompson Project, notwithstanding the fact that each unit does not represent an ownership in the Colorado-Big Thompson Project, but rather represents a contractual right to use a proportionate share of the water allocated to the Northern Colorado Water Conservancy District under the 1938 Repayment Contract between the United States Bureau of Reclamation and the Northern Colorado Water Conservancy District.

19.04.015 Water bank.

The city has established a water bank for the purpose of facilitating transfers of water rights to the city in satisfaction of the city’s water rights requirements. In exchange for the transfer of water rights to the city in accordance with Section 19.04.017A.1., the city shall issue water bank credit in the city’s water bank in the form of a holding receipt for use in accordance with the terms and conditions set forth in the water bank agreement, the holding receipt, and this chapter. Water bank credit, as

represented by the holding receipt, may be transferred, in whole or part, to a third party upon the third party's execution of an assumption of obligations agreement in a form acceptable to the city attorney. Any water bank credit transferred on or after April 1, 2002 in violation of this section shall be deemed void.

19.04.016 Water bank agreement.

The Loveland utilities commission, in consultation with the city attorney, shall approve the form of the water bank agreement.

19.04.017 Acquiring water bank credit.

- A. Credit in the city's water bank may be acquired by either of the following methods:
 1. By transferring to the city, by good and sufficient conveyance, grant, assignment, or decree, ownership of water rights acceptable to the city. Applications to transfer water rights to the city shall be filed with the department. The applicant shall pay all expenses incurred in order to transfer ownership of the water rights to the city, unless otherwise agreed between the city and the applicant. In exchange for such transfer, the applicant shall receive credit in the city's water bank. Ownership of the water rights must be fully vested in the city, and all other applicable requirements set forth in this chapter must be satisfied, before water bank credit will be issued.
 2. By acquiring credit in the city's water bank from a water bank account holder. Upon an applicant's request, the city shall make available a list of water bank account holders who have informed the city that they are willing to sell water bank credit. The purchase price of such water bank credit shall be determined by the parties without further involvement of the city.
- B. Credit in the city's water bank may not be acquired from the city by cash purchase on or after January 1, 2006.

19.04.018 Value of water bank credit.

- A. The value of water bank credit received in exchange for water rights transferred to the city shall be determined at the time such water bank credit is applied to satisfy the city's water rights requirements.
- B. The current value of ditch water rights shall be as follows:

| Ditch/Ditch Company | Value | |
|---|---|--|
| | With Payment of the Native Raw Water Storage Fee | Without Payment of the Native Raw Water Storage Fee |
| Barnes | 3.32 acre-feet of water per inch | 0.86 acre-feet of water per inch |
| Big Thompson Ditch & Manufacturing Company | 186.57 acre-feet of water per share | 70.90 acre-feet of water per share |
| Buckingham Irrigation Company (George Rist Ditch) | 6.36 acre-feet of water per share | 0.38 acre-feet of water per share |
| Chubbuck Ditch | 2.94 acre-feet of water per inch | 0.41 acre-feet of water per inch |
| Louden Irrigating Canal and Reservoir Company | 12.17 acre-feet of water per share | 2.43 acre-feet of water per share |
| South Side Ditch Company | 4.55 acre-feet of water | 1.46 acre-feet of water |

| | | |
|--|-----------------|-----------|
| | water per share | per share |
|--|-----------------|-----------|

The values set forth in the table above represent the historical average yield of each ditch as stated in Spronk Water Engineers Raw Water Supply Yield Analysis Update dated January 2012. These values are subject to change at any time by ordinance of council. The value of water bank credit received in exchange for transferring to the city ditch water rights not set forth in the table above shall be determined by council by resolution on a case-by-case basis at the time such water bank credit is applied to satisfy the city's water rights requirements. The native raw water storage fee applicable to each ditch or ditch company is set forth in Section 19.04.045.

C. The current value of Colorado-Big Thompson Project units shall be one acre-foot per unit.

19.04.020 Water rights required for development.

A. Residential development.

1. Land zoned R1e, R1, R2, R3e, or R3 after June 5, 1984 and developed for residential uses and land zoned PUD, MAC, or E and developed for residential uses shall not receive final approval for development, nor shall construction or development be allowed on any such land, nor shall water service be furnished to any such land, until the city has received by grant or transfer the perpetual right to use the total amount of divertible water rights, in acre feet of water, as determined by the following formula:

Total water rights due (in acre-feet) = $(1.6 \times \text{net lot acreage}) + (1.4 \times \text{acreage of that portion of each residential lot which is greater than 15,000 square feet}) + (0.23 \times \text{number of dwelling units})$

Water rights required under this Subsection A. shall be paid prior to approval of the final plat by the director of development services. Notwithstanding anything herein to the contrary, water rights required under this Subsection A. may not be paid prior to acceptance of a complete application for final plat by the director of development services.

2. The applicant shall have a credit toward the requirements set forth in this Subsection A. for water rights previously furnished in conjunction with annexation or zoning.

B. Nonresidential development.

1. Any lot or tract zoned PUD, MAC, or E, if the developed use will be non-residential, and any lot or tract zoned Be, B, I, or PP shall not be entitled to receive water service or a building permit for any construction on the lot or tract until the city has received by a good and sufficient conveyance, grant, assignment, or decree the perpetual right to use the acre feet of water required by the following schedule:

| Water Meter Size | Acre-feet Required |
|------------------|--------------------|
| 3/4" | 1 |
| 1" | 4 |
| 1 1/2" | 8 |
| 2" | 13 |
| 3" | 26 |
| 4" | 40 |
| 6" | 80 |
| 8" | 128 |
| 10" | 184 |
| 12" | 273 |

Notwithstanding anything herein to the contrary, water rights required under this Subsection B. may not be paid prior to the building official's acceptance of a complete application for building permit.

2. The applicant shall have a credit toward the requirements set forth in the schedule for water rights previously furnished in conjunction with annexation or zoning.
3. Where property has been subdivided at or after the time of the furnishing of water rights, the water rights furnished shall be prorated among the parcels of the subdivision based upon the respective land areas. Water rights furnished to fulfill the requirements of this Subsection B. in connection with other water meters previously granted on the same tract or larger tract, as the case may be, shall not be prorated.
4. Whenever a nonresidential water meter is abandoned or reduced in size, a credit shall be established in the city's water bank for the difference between the required water rights for the existing water meter and the required water rights for the new water meter, if any. Said credit shall be eligible for use only to fulfill water rights requirements arising on the property served by the original water meter, unless otherwise approved by council. Any unused credit remaining after ten years from the date the credit is created shall be canceled, and the owner thereof shall have no further claim to said credit. Upon application to council made prior to the expiration date, council may, for good cause shown, extend the expiration date as it sees fit.

C. Mixed-use buildings. Water rights applicable to mixed-use buildings shall be paid prior to issuance of the building permit. For the purposes of this Subsection C., "mixed-use buildings" shall mean those buildings containing both residential and nonresidential uses. Notwithstanding anything herein to the contrary, water rights required under this Subsection C. may not be paid prior to the building official's acceptance of a complete application for building permit.

D. Dedicated irrigation meters. Water rights applicable to dedicated irrigation meters are set forth in Chapter 19.06.

E. Transfers required by this section and Chapter 19.06 are summarized in the following table:

| Use | Final Plat | Building Permit | Meter Activation |
|---|--|--|--|
| R1e, R1, R2, R3e, R3, Residential development within a PUD, MAC, or E | Total water rights as determined by 19.04.020A. Credit given for water rights paid at annexation or zoning. | None. | None. |
| Be, B, I, PP Nonresidential development within a PUD, MAC, or E | None. | Total water rights as determined by 19.04.020B. Credit given for water rights paid at annexation or zoning. | None. |
| Mixed-use buildings | None. | Total water rights as determined by 19.04.020A. and B. | None. |
| Dedicated irrigation meters | None. | None. | Total water rights as determined by Chapter 19.06. |

19.04.021 Exceptions to water rights requirements.

- A. Certain conditions may warrant exceptions to the water rights requirements set forth in Section 19.04.020A. Such exceptions may be allowed at the discretion of city staff for the following reasons:
 - 1. Water rights will not be required for areas which are legally served by other domestic water sources or water providers.
 - 2. Water rights requirements may be waived or modified by development or special agreements as approved by council when deemed in the best interest of the city.
 - 3. Subdivisions which include both an area where (i) water rights were furnished previously in conjunction with prior city annexation and zoning requirements, or where the property is subject to the provisions described in [Section](#) 19.04.022, and (ii) an area where the current water rights requirements apply, pursuant to Section 19.04.020A. or B., shall be given a credit of two or three acre-feet per acre, as appropriate, on the area subject to prior city annexation or zoning requirements to apply toward the current requirement for the entire area being platted. For this calculation, the applicant shall furnish, with the application, the area of the proposed subdivision which was subject to prior city annexation and zoning requirements. If the credit is larger than the total quantity needed under the current requirements for the requested approval, the requirement shall be deemed to have been met for the entire platted area, and no further credit shall exist.
 - 4. For any land designated as an outlot in an approved final development plan of a planned unit development, water rights shall not be required for that outlot so long as the outlot is approved for a use that will not require connection to the city's potable water distribution system. In the event, however, that the outlot is duly approved by the city for a use that will require connection to the city's potable water distribution system or the outlot is redesignated, in accordance with the City Code, as a lot or tract, the water rights requirements of [Section](#) 19.04.020A. and B., if applicable to the outlot, lot, or tract must be satisfied prior to such approval or redesignation.
- B. If, at any time, city water service is requested for all or any portion of such land which has been exempted in part or in whole from water rights requirements in this, the applicant for city water service shall transfer to the city water rights in an amount equal to that which would be required, at the time such service is requested, in connection with annexation, zoning, and development or issuance of a building permit for a parcel of land of the same size for which water service is sought.

19.04.022 Calculation of water previously furnished to the city.

- A. The following rules shall be applied to determine the amount of raw water previously furnished in conjunction with prior city annexation and zoning requirements. In such areas, the requirements of Section 19.04.020A. and B. shall not apply, except as provided in this section.
 - 1. All land annexed to the city between December 5, 1978, and November 1, 1982, except such land as was zoned DR developing resource district on November 1, 1982, shall be deemed to have furnished to the city three acre-feet of water per acre, unless the utility commission determines otherwise based upon competent evidence. No additional water rights will be required, nor any excess credit given except as provided in [Section 19.04.021A.5](#).
 - 2. All land annexed to the city prior to December 5, 1978, except land zoned DR, developing resource district on that date, shall be deemed to have furnished to the city two acre feet of water per acre, unless the utility commission determines otherwise, based upon competent evidence. No additional water rights will be required, nor any excess credit given except as provided in [Section 19.04.021A.5](#).
 - 3. All land annexed to the city and zoned R1e, R1, R2, R3e, or R3 between November 1, 1982 and June 5, 1984 shall be deemed to have furnished to the city three acre feet of water per acre, unless the utility commission determines otherwise, based upon competent evidence.

No additional water rights will be required, nor any excess credit given except as provided in [Section 19.04.021A.5.](#)

4. All land zoned Be, B, or I after November 1, 1982 or zoned R1e, R1, R2, R3e or R3 after June 5, 1984 but not yet included in a final subdivision plat or final development plan, shall be deemed to have furnished to the city one acre-foot of water per acre unless the utility commission determines otherwise, based upon competent evidence.
5. All land zoned R1e, R1, R2, R3e, or R3 and platted between June 5, 1984 and October 5, 1998 shall be deemed to have furnished to the city water rights as calculated by the following formula unless the utility commission determines otherwise, based upon competent evidence.

Total acre-feet required = $(1.54 \times \text{net acres}) + (0.154 \times \# \text{ dwelling units})$.

All land zoned R1e, R1, R2, R3e, R3, or PUD with residential uses and platted between October 5, 1998 and November 16, 1999, shall be deemed to have furnished to the city water rights are calculated by the following formula unless the utility commission determines otherwise, based upon competent evidence.

Total acre-feet required = $(1.54 \times \text{net acres}) + (0.154 \times \# \text{ dwelling units}) + (2.0 \times \text{greenbelt areas})$.

All land with a tap dedicated to irrigation purposes only with Be, B, I or PUD with commercial or industrial use zoning between October 5, 1998 and November 16, 1999 and not subject to the provisions of Section [19.04.022A.1. or 2.](#) shall be deemed to have furnished to the city two acre-feet of water per acre unless the utility commission determines otherwise, based upon competent evidence.

19.04.023 Water rights for service outside the city limits.

- A. Water rights are required for outside city water service. For nonresidential uses, the quantity of water rights required shall be determined in accordance with Section 19.04.020B. (calculated in the same manner as if the property to be served were located inside the city). For residential uses, the quantity of water rights required shall be determined as the lesser of the quantity specified in Section 19.04.020B. or Section 19.04.020A. (calculated in the same manner as if the property to be served were located inside the city). For irrigation use only, the quantity of water rights required shall be determined in accordance with Section 19.06.040B. or Section 19.050.050, as applicable (calculated in the same manner as if the property to be served were located inside the city).
- B. Water rights required for outside city water service shall be due at the time of application for outside city water service. Any outside city customer who has received a city water meter prior to December 1, 2012 but has not paid water rights to the city shall be required to provide water rights to the city upon the earlier of the following to occur to the property receiving city water service: (i) annexation; (ii) subdivision; (iii) "redevelopment," as defined in the Site Development Performance Standards and Guidelines; (iv) change in meter classification (residential, nonresidential, or irrigation) (v) change in meter size; or (vi) installation of additional meters. Notwithstanding anything herein to the contrary, water rights shall not be due upon any of the following to occur to the property receiving city water service: (i) minor changes to the property that do not rise to the level of "redevelopment," such as roof replacements, or basement finishes that do not increase the gross floor area of a building or structure by at least twenty-five percent over the gross floor area existing as of February 1, 1988; (ii) the addition of outbuildings that do not require a change in meter size or additional meters; or (iii) the addition of a fire hydrant.

19.04.040 Satisfying water rights requirements.

To satisfy the city's water rights requirements, the applicant must apply water bank credit in an amount sufficient to satisfy the city's water rights requirements. A minimum of fifty percent of every

transaction to satisfy such requirement must include water bank credits received in exchange for Colorado-Big Thompson Project units transferred to the city or water bank credits acquired from the city by cash purchase, or by paying the cash-in-lieu price (“50% Rule”). If the acre-feet requirement resulting from the 50% Rule results in a fractional requirement of less than a one-half acre-foot, it may be rounded down to the nearest acre-foot.

19.04.041 Cash-in-lieu price.

The cash-in-lieu price shall be equal to the market price of one Colorado-Big Thompson Project unit as recognized by resolution of the Loveland utilities commission, divided by the yield (in acre-feet) of one Colorado-Big Thompson Project unit as set forth in Section 19.04.018B., with the resulting quotient multiplied by 1.05. Said fee shall be calculated in accordance with the resolution in effect at the time such payment is due.

19.04.045 Native raw water storage fee.

- A. When credit in the city’s water bank received in exchange for the transfer of ditch water rights to the city is applied to satisfy the city’s water rights requirements, it shall be subject to the native raw water storage fee unless exempted under Subsection B. or C. below. Said fee shall be calculated and due at the time such water bank credit is applied to satisfy the city’s water rights requirements as provided in Sections 13.04.245C. and 19.04.020. The current native raw water storage fee applicable to each ditch or ditch company shall be as follows:

| Ditch / Ditch Company | Native Raw Water Storage Fee Per Acre-Foot |
|---|---|
| Barnes Ditch | \$5,750 |
| Big Thompson Ditch & Manufacturing Company | \$3,530 |
| Buckingham Irrigation Company (George Rist Ditch) | \$7,400 |
| Chubbuck Ditch | \$7,400 |
| Louden Irrigating Canal and Reservoir Company | \$6,850 |
| South Side Ditch Company | \$6,770 |

The native raw water storage fees set forth in the table above are taken from the Raw Water Master Plan. These values are subject to change at any time by ordinance of council. The native raw water storage fee applicable to water bank credit received in exchange for transferring to the city ditch water rights not set forth in the table above shall be determined by council by resolution on a case-by-case basis at the time such water bank credit is applied to satisfy the city’s water rights requirements. The native raw water storage fee shall not apply to water bank credits received in exchange for the transfer of Colorado-Big Thompson Project units to the city or water bank credits acquired from the city by cash payment or to payments of the cash-in-lieu price.

- B. When credit in the city’s water bank received in exchange for the transfer of ditch water rights to the city on or before July 20, 1995 is applied to satisfy the city’s water rights requirements, it shall not be subject to the native raw water storage fee, notwithstanding the provisions of Subsection A. above.
- C. When water bank credit is applied to satisfy the city’s water rights requirements, the person applying the credit may choose not to pay the native raw water storage fee set forth above, in which case the value of the credit shall be decreased in accordance with the table set forth in Section 19.04.018B.

19.04.050 Escrow of water rights or cash in lieu of water rights.

- A. If requested by the developer of the land for which water rights are owed, the water rights or cash in lieu of water rights may be conveyed into an escrow held by the city clerk to be released to the city upon approval of the final plat for residential development or upon issuance of the building permit for non-residential development, and if the final plat or building permit is denied to be returned to the developer upon such denial. The escrow shall be governed by the terms of an escrow agreement between the city and the developer. In the event the developer has requested an escrow of all or any portion of a cash in lieu of water rights payment for residential development, the escrow agreement shall provide that the cash in lieu payment will be held in escrow for a period not to exceed forty-five days following council approval to the final plat.
- B. Where the cash in lieu payment is subject to an escrow agreement, the final plat approval shall be expressly conditioned upon payment of the fee within the forty-five-day period following final plat approval. In the event the cash in lieu payment is not paid within said forty-five-day period, the final plat approval shall be void and of no force or effect. During the forty-five-day period prior to receipt of the cash in lieu payment, the final plat shall not be recorded with the Larimer County Clerk and Recorder.

19.04.070 Water rights appurtenant to land.

At the time land is annexed to the city or application for final development is made to the city, the owner shall, by a good and sufficient conveyance, grant, assignment, or decree, transfer to the city all water rights appurtenant to the land being annexed; provided, however, that in no event shall the owner be required to transfer water rights in excess of the water rights requirements imposed upon annexation and development; and provided further, that acceptability of specific water rights shall be subject to council approval.

19.04.080 Requirements for acceptance of ditch water.

- A. Applications to transfer ditch water rights to the city shall be filed with the department. No ditch water rights shall be accepted by the city unless first approved by the Loveland utilities commission. Said approval shall not be given without satisfaction of each of the following requirements:
 1. Evidence of the applicant's ownership of the ditch water rights in a form satisfactory to the city attorney;
 2. A water bank agreement executed by the applicant and, if applicable, other documentation, such as a statement of historical use and dry-up covenant, in a form approved by the city attorney; and
 3. A finding by the Loveland utilities commission that it is in the city's best interests to accept the ditch water rights.
- B. The Loveland utilities commission may place conditions or restrictions on the city's acceptance of the ditch water rights or the applicant's use of the corresponding water bank credit as necessary to protect the city's interests. Applicants who do not wish to transfer their ditch water rights to the city subject to such conditions or restrictions may withdraw their application prior to execution of the water bank agreement by the city.
- C. As used herein, "ditch water rights" shall refer to and mean water rights from the following ditches or ditch companies commonly referred to as: Big Thompson Ditch & Manufacturing Company; Buckingham Irrigation Company (George Rist Ditch); Louden Irrigating Canal and Reservoir Company; and South Side Ditch Company.

19.04.085 Other water rights.

The city may accept water rights other than Colorado-Big Thompson Project units and those ditch water rights listed in Section 19.04.080C. upon such terms and conditions as are approved by council by resolution.

19.04.090 Vested rights concerning water rights owed.

The water rights owed by an applicant for a development for which the applicant has obtained and possesses a vested right to undertake and compete the development pursuant to C.R.S. § 24-68-101 *et seq.* as implemented by Chapter 18.72, shall be calculated in accordance with the water rights provisions in effect on the date applicant's right to develop was vested in accordance with Chapter 18.72.

Chapter 19.06

IRRIGATION

Sections:

- 19.06.010 Definitions.**
- 19.06.020 Irrigation with non-city water.**
- 19.06.030 Irrigation with raw water.**
- 19.06.040 Irrigation with treated city water.**
- 19.06.050 Irrigation subject to Hydrozone water budget.**
- 19.06.060 Dedicated irrigation meter capacity.**
- 19.06.065 Irrigation booster pumps prohibited.**
- 19.06.070 Water rights due prior to activation of dedicated irrigation meter.**

19.06.010 Definitions.

- A. As used in this chapter, all words and phrases shall be interpreted and defined in accordance with Section 16.08.010 and Subsection B of this section. In the event of a conflict, Subsection B. of this section shall control.
- B. As used in this chapter:

“Dedicated irrigation meter” means a meter installed for the sole purpose of providing water for irrigation. For the purposes of Section 19.06.050, the phrase “dedicated irrigation meter” shall mean a single dedicated irrigation meters or sets of interconnected dedicated irrigation meters.

“Hydrozone” means a portion of the landscaped area having plants with similar water needs. Typical plant lists for each hydrozone are set forth in the Site Development Performance Standards and Guidelines at Appendix A. The city recognizes four hydrozones: high water need; moderate water need; low water need; and very low water need (no irrigation required).

“Water budget” means the maximum amount of water an irrigator is allotted per year to irrigate a specific landscaped area through a dedicated irrigation meter or set of interconnected dedicated irrigation meters.

19.06.020 Irrigation with non-city water.

Areas to be irrigated with water from other municipal or quasi-municipal sources shall not require the payment of any water rights to the city.

19.06.030 Irrigation with raw water.

- A. Areas to be irrigated with raw water, including well water, shall not require the payment of any water rights to the city, provided all of the following conditions are met:
 1. The owner provides written documentation in the form of water court decrees or water shares evidencing the fact that there are adequate water rights to serve the proposed irrigation system, and in the event a homeowners association is to be responsible for the maintenance of the areas to be irrigated with raw water, evidence that the homeowners association has or will have the right to use the water for such purposes.
 2. The owner applies to, and obtains approval from, the director of the water and power department or the director's designee for the use of raw water irrigation.
 3. The city receives documentation, verified by a professional engineer, certifying that the irrigation system has been designed to prevent the possibility of connection of such system to the city's treated water system.
 4. The following statement appears on the plat of the area to be irrigated with raw water, or if the plan for such irrigation is not presented in conjunction with a plat, the following

statement is included in a recorded instrument with a surveyed legal description of the area to be irrigated:

“A portion of the land area depicted on this plat or legally described in this instrument is approved by the City of Loveland for irrigation using raw water from private sources. The Loveland Municipal Code contains requirements regulating the irrigation of such area(s) and prohibits the use of treated, potable city water being used for such irrigation. The city’s permission to irrigate with raw water does not constitute any assurance by the city that there is either adequate raw water or adequate water rights available to the land to properly irrigate such area(s) or that the raw water irrigation system has been adequately designed to properly irrigate such area(s). The city has no obligation to provide any water to irrigate such area(s).”

5. The irrigated area is conspicuously posted with signs stating that raw water is being used for irrigation. Such signs and their locations shall be subject to the approval of the director of water and power or the director’s designee, and no sign permits shall be required for the same.
- B. If, at any time, treated city water service is requested for all or any portion of an area formerly irrigated with raw water for which water rights have not been paid, the applicant for such service shall transfer to the city water rights in an amount equal to the water rights requirement in existence at the time of such application.
- C. If the owner of an area irrigated with treated city water desires to convert to raw water irrigation, the owner may apply to do so upon the same terms and conditions as set forth in this section. The owner shall file a recorded instrument or correction plat with the notation set forth in Section 19.06.030A.4. The owner shall be granted a credit in the city’s water bank for water previously transferred for such area. Said credit shall be described in acre-feet of water. Storage fees applicable to said credit shall be considered paid in full. In addition, the owner may request a return of system impact fees in accordance with Section 13.04.032.

19.06.040 Irrigation with treated city water.

- A. Areas to be irrigated with treated city water by use of a residential or nonresidential meter shall be required to provide water rights as set forth in Section 19.04.020.
- B. Except as provided in Section 19.06.050, areas to be irrigated with treated city water by use of a dedicated irrigation meter shall be required to provide three acre-feet of water for each acre of irrigated area.

19.06.050 Irrigation subject to Hydrozone water budget.

- A. The purpose of this program is to protect the city’s water resources by encouraging the design, installation, and maintenance of water-efficient landscapes in which plantings are grouped by hydrozone and are subject to a water budget. For information regarding water-efficient landscape requirements, see the city’s performance standards and design guidelines for the development and redevelopment of property currently in effect.
- B. Participation in the program is voluntary. Irrigators must meet the requirements of the city’s performance standards and design guidelines for the development and redevelopment of property in effect at the time the irrigator elects to participate in the program, and demonstrate a twenty-five percent reduction in water use from traditional bluegrass landscapes as set forth in Subsection F.1. below. Irrigators who do so shall be entitled to a reduced water rights requirement as set forth in Subsection E. below and may incur lower system impact fees resulting from reduced meter sizes necessary to irrigate their landscapes.
- C. **Hydrozone agreement required.** All participants in the program who join the program on or after July 1, 2017 shall execute a Hydrozone Agreement signed by the director. The agreement must be executed prior to the issuance of an irrigation tap or retrofit of existing irrigation meter. Such agreement will describe the requirements of the Hydrozone program, including the water

rights payments that will be required if the water budget is exceeded for three consecutive years under the provisions of this subsection 19.06.050. If the participant is a common interest community or special taxing district (such as a homeowners' association (HOA) or special district), the Hydrozone Agreement shall require disclosure of certain Hydrozone program terms and conditions within the common interest community agreement, HOA covenant, or other relevant real estate disclosure to members or owners of such common interest community or special taxing district. The Hydrozone Agreement must specifically reference the legal descriptions of land involved in the Hydrozone program, and the City shall record the agreement with the Larimer County Clerk and Recorder. The obligations under the agreement will run with the land and carry forward to all new owners, including homeowners' associations or special districts or any other legal entity in ownership. It is the responsibility of the current owner to advise any new owners, including new members of the common interest community, if applicable, about the Hydrozone program and the potential monetary penalties for exceeding the water budget for a particular year and for the water rights payments that may be required for exceeding the water budget for three consecutive years.

D. **Soil Amendments.** Every participant must install soil amendments appropriate to the particular hydrozone landscape plans and the native soils of the site, unless such soil amendments are deemed unnecessary based on soil testing results or the informed opinion of a professional engineer, licensed landscape architect, or other qualified professional, such as, but not limited to, a certified professional agronomist (CPAg), a certified horticulturist, or a Colorado State University Certified Master Gardener. Prior to the issuance of a hydrozone irrigation tap, a participant must execute and submit to the city a soil amendment affidavit, in a form approved by the director, describing the soil amendments installed to each area of the landscape or attesting to an informed opinion or soil testing results that soil amendments were unnecessary for the particular landscape or areas of the landscape.

E. Areas to be irrigated with treated city water by use of a dedicated hydrozone irrigation meter subject to a water budget shall be required to provide the following water rights, which are calculated based on the maximum gallons per square foot per year required by each hydrozone:

| Hydrozone | Maximum Gallons Used Per Square Foot Per Year | Acre-feet of Water Due Per Acre |
|---------------------|---|---------------------------------|
| High water need | 20 | 3 |
| Moderate water need | 12 | 1.8 |
| Low water need | 3.6 | 0.6 |
| Very low water need | 0 | 0 |

Note: the above requirements for moderate and low water need hydrozones may vary from the irrigation requirements identified in the city's performance standards and design guidelines for moderate and low water plant irrigation needs.

F. **Hydrozone Water budget.**

1. The city will calculate the water budget based on the maximum gallons to be used per square foot per year by each applicable hydrozone irrigated through a dedicated irrigation meter in accordance with the table set forth in Subsection E. If the calculation does not demonstrate a twenty-five percent reduction in water use from the three acre-feet per acre standard of traditional bluegrass landscapes, the irrigator may not participate in the program and must pay the water rights set forth in Section 19.06.040.
2. An irrigator may obtain an increase in his or her annual water budget by providing additional water rights to the city, if approved by the director, and if such increased annual water budget will remain at or below a twenty-five percent reduction in water use from traditional bluegrass landscapes. Such additional water rights may be provided through application of water bank credit or paying the cash-in-lieu price pro rata per additional acre-foot of water provided to the city. The revised annual water budget will be calculated in accordance with

the formula in Section 19.06.050.E, and the parties of interest shall execute an amendment to the Hydrozone agreement to be recorded by the City with the Larimer County Clerk and Recorder.

3. Failure to meet annual water budget.
 - a. Irrigators who exceed their annual water budget shall pay the following surcharge:

| Water Consumed | Surcharge |
|-------------------------------|--------------------------|
| 0% to 100% of annual budget | No surcharge |
| 101% to 150% of annual budget | 1 x base irrigation rate |
| 151% to 200% of annual budget | 2 x base irrigation rate |
| 201% + of annual budget | 4 x base irrigation rate |

- b. Irrigators who exceed their annual water budget by an amount more than five percent (5%) of the total annual water budget in three consecutive years shall be required to provide full water rights according to the following formula:
(water rights required pursuant to Section 19.06.040) – (water rights previously paid using the water budget calculation set forth in 19.06.050)
Water rights due pursuant to this section shall be paid within sixty days of the date of invoice, unless alternative arrangements for payment have been approved by the director. Any unpaid amounts may be subject to lien in accordance with Section 13.04.290 or collected in any other manner permitted by law.
- c. Irrigators may voluntarily elect to leave the program by providing a full water rights payment as calculated above.
- d. The amount owed as an annual surcharge for exceeding the water budget in a particular year may be paid towards satisfying the water rights payment if an irrigator desires to voluntarily leave the hydrozone program after that particular year, or becomes ineligible for the program as a result of exceeding the water budget for three consecutive years. Surcharges from previous years cannot apply towards satisfying a required water rights payment under this subsection.

G. Establishment period and replacing or redesigning hydrozone landscapes.

1. The city recognizes that new landscapes require more water when they are initially being established. Therefore, the first three years after hydrozone meter activation will be a grace period not subject to the surcharge set forth in subsection 3.a., nor shall such irrigation count toward the three years provided for in subsection 3.b. The three-year grace period shall be calculated as follows:
 - a. If meter activation is before August 1: the grace period shall run for the then-current calendar year plus the next two calendar years.
 - b. If meter activation is after August 1: the grace period shall run for the then-current calendar year plus the next three calendar years.
2. Irrigators who already participate in the program but who will be replacing or redesigning a landscape may apply for a one-year exemption period, to be approved by the director, that will not be subject to the surcharge set forth in Subsection 2.a., and will not count as one of the three consecutive years which could trigger a full water rights payment per Subsection 2.b. The application for a one-year exemption period for replaced or redesigned landscape must include a detailed description of the proposed replaced or redesigned landscape, receipts for soil amendments and/or new plantings, photographs, and/or other extrinsic evidence that justifies a one-year exemption period. Irrigation of any redesigned or replaced landscape must not exceed the original annual water budget, or additional water rights may be due. Such exemption period must be requested before July 1 of the particular year for which a landscape will be replaced or redesigned.

H. An irrigator that has previously provided the full water rights requirement for a traditional irrigation meter that chooses to retrofit its irrigation meter by redesigning its landscapes to meet the requirements of this section and the city's performance standards and design guidelines for the development and redevelopment of property then in effect shall be entitled to the following credit and refund:

1. Credit in the city's water bank equal to the difference between the water rights paid and the water rights due under Subsection F. Said credit shall be described in acre-feet of water.
Storage fees applicable to said credit shall be considered paid in full.
2. Refund of system impact fees as set forth in Section 13.04.033.

I. The director may approve a variance from the requirements of this section 19.06.050 if circumstances exist to justify such a variance, such as, but not limited to, unforeseen documented difficulties in establishing a hydrozone landscape, sustained drought conditions, or other documented hardship in installing and maintaining a hydrozone landscape and/or irrigation system. (Ord. 6117 § 1, 2017)

19.06.060 Dedicated irrigation meter capacity.

A. Irrigation systems utilizing dedicated irrigation meters shall be designed based on the available flow through the meter at the project site, but shall not exceed the flows set forth in the following table:

| Meter Size | Maximum Continuous Design Flow (If Available) |
|------------|---|
| 3/4 inch | 15 gallons per minute |
| 1 inch | 25 gallons per minute |

For meters larger than one inch, the irrigation system designer shall be responsible for verifying minimum system pressures occurring seasonally and throughout the day (especially during peak demand periods).

19.06.065 Irrigation booster pumps prohibited.

The installation or operation of an irrigation booster pump in water service lines that are directly fed by the city's water distribution system is prohibited. Notwithstanding anything herein to the contrary, any such irrigation booster pumps installed prior to June 5, 2012 may continue in operation without violating this section, but may not be replaced.

19.06.070 Water rights due prior to activation of dedicated irrigation meter.

Water rights required for dedicated irrigation meters shall be due prior to activation of the meter, or first meter if in a set of interconnected meters, but may not be paid prior to approval of the final plat by the director of development services.

-----End of Title 19 -----